CHARLES ELMORE CROPLEY
CLERK

United States of America

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1945

---

No. 162

---

HAROLD SHRIER, individually and doing business under the name and style of A. Shrier & Sons Company, a registered Michigan co-partnership,
Petitioner,
vs.
THE UNITED STATES OF AMERICA,
Respondent

---

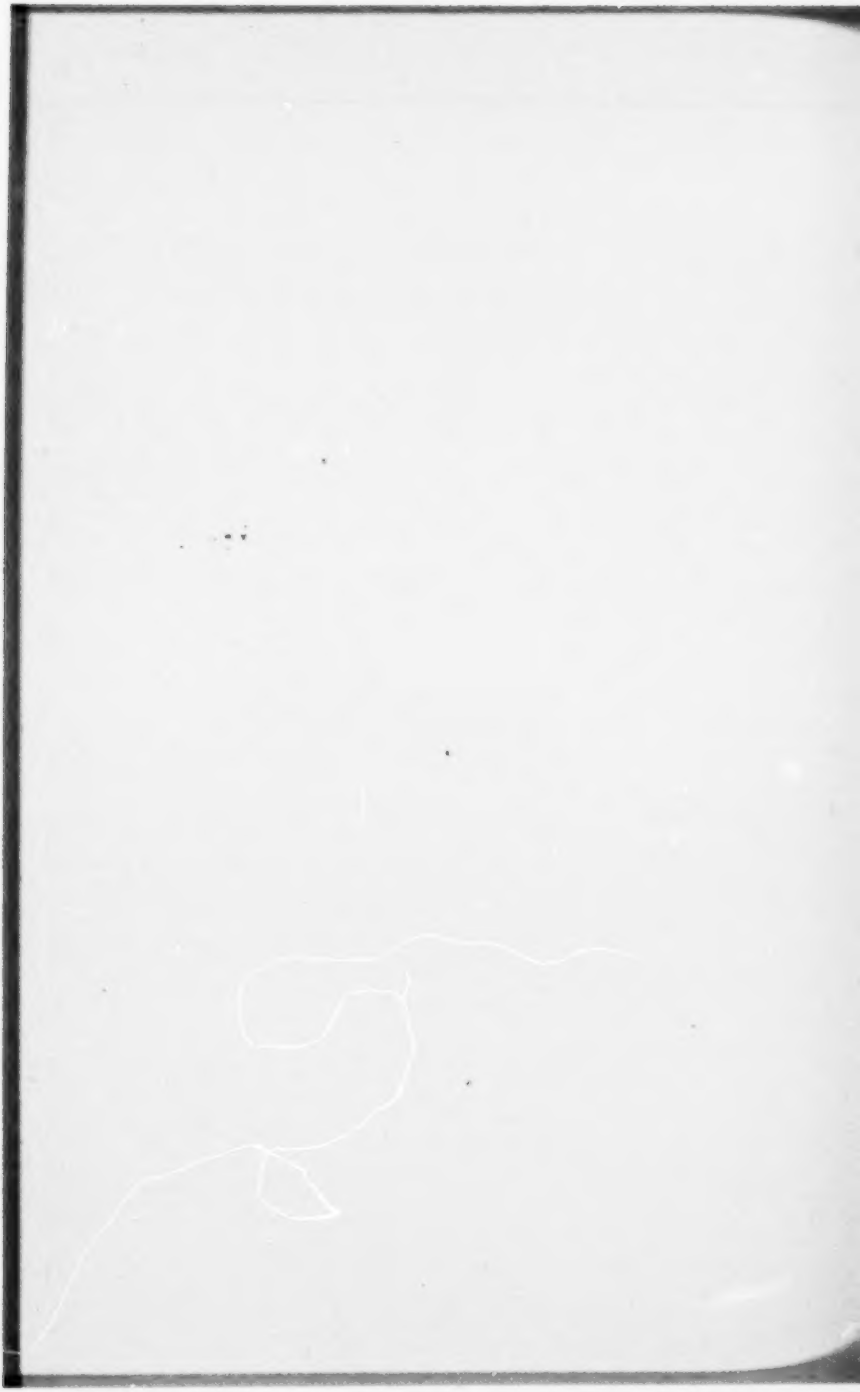
## PETITION FOR WRIT OF CERTIORARI AND BRIEF IN SUPPORT THEREOF

---

JASON L. HONIGMAN,
Attorney for Petitioner,
2003 Dime Building,
Detroit 26, Michigan.

MILTON J. MILLER,
NORMAN S. SOMMERS,
Of Counsel.

Interstate Brief & Record Co., Cass Bldg., 457 Fort St. W., Detroit 26, Mich.



## SUBJECT INDEX


| | Page |
|---|---|
| Petition for Certiorari | 1 |
| Statement of the Matters Involved | 2 |
| Questions Presented | 3 |
| Reasons for Granting Certiorari | 4 |
| Prayer | 6 |
| Brief in Support of Petition for Writ of Certiorari | 7-33 |
| Opinion of Court Below | 7 |
| Jurisdiction | 8 |
| Statement of the Case | 8 |
| Specification of Error | 8 |
| Summary of Argument | 9 |
| Argument | 10-32 |
| I. "Regulation" 271, Not Having Been Approved by the Secretary of Agriculture, Never Became a Regulation Under the Price Control Act Nor Can Any Action Be Brought for Its Enforcement | 10-18 |
| II. The Approval of "Regulation" 271 by the War Food Administration Does Not Fulfill the Statutory Requirement of Approval by the Secretary of Agriculture | 18-26 |
| III. The Price Control Act Does Not Deprive the Court of the Jurisdiction to Determine That the "Regulation" Was Not Validly Promulgated and Cannot Be Enforced | 27-32 |
| Conclusion | 33 |

## TABLE OF CASES CITED


| | Page |
|---|---|
| Bowles, Administrator, v. Strickland (D. C. Ga. 1944), 55 Fed. Supp. 132 | 14-16 |
| Brown v. Banana Distributors (D. C. Conn., 1943), 52 Fed. Supp. 804 | 16-17 |
| Marbury v. Madison, 2 L. Ed. 60 | 22-24 |
| Yakus v. U. S., 88 L. Ed. 653 (1943) | 4, 29-31 |


## STATUTES AND REGULATIONS CITED


| | |
|---|---|
| 57 Stat. 392, p. 415 | 25 |
| 18 U. S. C. A., following Sec. 688 | 8 |
| 50 U. S. C. A. Appx., Secs. 601-622 | 21 |
| 50 U. S. C. A. Appx., Sec. 901 | 8, 20 |
| 50 U. S. C. A. Appx., Sec. 902 | 28 |
| 50 U. S. C. A. Appx., Sec. 903(e) | 4, 5, 8, 11, 31 |
| 50 U. S. C. A. Appx., Sec. 903(f) | 8, 11 |
| 50 U. S. C. A. Appx., Sec. 921(b) | 9, 21-22 |
| 50 U. S. C. A. Appx., Sec. 923 | 27, 29 |
| 50 U. S. C. A. Appx., Sec. 924 | 29 |
| 50 U. S. C. A. Appx., Sec. 924(d) | 4, 27, 28, 32 |
| Executive Order No. 9328 | 2, 9 |
| Executive Order No. 9334 | 9, 20 |
| Executive Order No. 9250 | 2, 9 |
| Maximum Price Regulation No. 271 | 2, 11 |

United States of America

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1945

---

No.....

---

HAROLD SHRIER, individually and doing business under the name and style of A. Shrier & Sons Company, a registered Michigan co-partnership,
Petitioner,
vs.
THE UNITED STATES OF AMERICA,
Respondent

---

## PETITION FOR WRIT OF CERTIOARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT

---

To The Honorable, The Chief Justice and The Associate Justices of The Supreme Court of The United States:

Your petitioner, Harold Shrier, by his Counsel, Jason L. Honigman, alleges:

## STATEMENT OF THE MATTERS INVOLVED

The instant petition seeks to review the judgment and decision of the Circuit Court of Appeals for the Sixth Circuit entered on June 4, 1945, affirming the judgment of the District Court for the Eastern District of Michigan, Southern Division.

Petitioner appealed to the Circuit Court of Appeals for the Sixth Circuit from a conviction and sentence for the sale by petitioner of 35 bags of onions in July, 1943, for a total over-charge of $89.60 over the alleged O.P.A. ceal-ing price (R. 1-8, 23). On this conviction, petitioner was sentenced to four months imprisonment and a fine of $1,000 (R. 23).

Petitioner was charged in the information filed against him in the lower court of selling onions in the City of Detroit at a price in excess of that permitted by Maximum Price Regulation No. 271 as amended, issued by the Price Administrator, pursuant to the authority of the Emergency Price Control Act of 1942, as amended, and Executive Orders No. 9250 and 9328, issued by the President of the United States (R. 1-7). Petitioner filed a demurrer in which he contended, among other matters, that the purported "Regulation" had not been approved by the Secretary of Agriculture, as required by Sec. 3 (e) of the said Price Control Act, and that, therefore, the "Regulation" was never validly promulgated and no criminal proceedings could be brought or founded thereon (R. 9-13).

Although it was conceded by the Government that this Regulation No. 271 was not approved by the Secretary of Agriculture (R. 14), the demurrer was denied by the District Judge on the ground that he was prohibited by the

Emergency Price Control Act from entertaining any attack on any regulation issued thereunder (R. 13-18).

Thereafter, on stipulation with the District Attorney (R. 18), Petitioner entered a plea of guilty, admitting only the facts of the sales by him at the prices alleged, but reiterating, by motion in arrest of judgment filed simultaneously, that, because said Regulation No. 271 was not approved by the Secretary of Agriculture, there was no validly enacted regulation prohibiting such sales and that no criminal action could be brought to enforce such a "regulation" (R. 19-22). The motion was denied and sentence imposed upon petitioner (R. 23) from which the appeal to the Circuit Court of Appeals for the Sixth Circuit was taken.

On June 4, 1945, the Circuit Court of Appeals for the Sixth Circuit, while holding that the questions raised attacking the validity of the regulation were of much interest and importance, affirmed the judgment of the District Court on the ground that it had no jurisdiction to determine the validity of the Regulation.

## QUESTIONS PRESENTED

I. Is Maximum Price Regulation 271, which concededly was not approved by the Secretary of Agriculture, a validly promulgated regulation under the Emergency Price Control Act of 1942, capable of enforcement in criminal proceedings?

II. Does the Price Control Act deprive the Court in criminal proceedings of the power to determine that such a "Regulation" was not validly promulgated and cannot be enforced?

## REASONS FOR GRANTING CERTIORARI

### A. The Circuit Court of Appeals Has Decided An Important Question of Federal Law, Which Has Not Been, But Should Be, Settled by This Court.

The Price Control Act cannot deprive the Court, in criminal proceedings, of the power to determine that, because a "Regulation" was not validly promulgated thereunder, it is void on its face and cannot be enforced.

The Price Control Act provides, in effect, that no regulation affecting an Agricultural commodity shall be promulgated without the prior approval of the Secretary of Agriculture (50 U.S.C.A. Appx. Sec. 903(e)). It is conceded that the Secretary of Agriculture did not approve the so-called "Regulation" 271 involved in the instant case. Without such approval the "regulation" is void on its face, and cannot be made the basis for a criminal prosecution.

The Circuit Court of Appeals in the instant case ruled that under Section 204(d) of the Price Control Act (50 U.S.C.A. Appx. Sec. 924(d)), it was barred from considering attacks on the validity of regulations. The United States Supreme Court in the minority opinion in *Yakus v. U. S.*, 321 U. S. 414, 88 L. Ed. 834 (1943), in which Mr. Justice Rutledge and Mr. Justice Murphy joined, held that, in criminal proceedings, the defendant could not be barred from attacking the validity of the Price Control regulation involved. Even the Majority opinion in the *Yakus* case, while holding that the defendants were barred from attacking Price Control regulations on the grounds asserted in that case, specifically left open the question as to whether a defendant would be free to

show that a regulation was void. It is petitioner's contention that Regulation 271, never having been effectually promulgated, is a void regulation within the scope of the *Yakus* decision. We respectfully submit that this important question of Federal law that was expressly left open by the majority opinion in the *Yakus* case should be decided by this Honorable Court.

**B. The Circuit Court of Appeals, Because of Its Erroneous Conclusion That It Lacked Jurisdiction to Declare the "Regulation" Void, Failed to Answer a Question of National Significance, Which Has Not Been, But Should Be, Settled by This Court.**

As the Price Control Act provides that no action shall be taken under said Act "by the Administrator or any other person with respect to any agricultural commodity without the prior approval of the Secretary of Agriculture" (50 U.S.C.A. Appx. Sec. 903(e)), the instant price regulation (Regulation No. 271), which concededly was not approved by the Secretary of Agriculture, is not capable of enforcement in criminal proceedings.

The Circuit Court of Appeals in the instant case referred to the question of the necessity of prior approval by the Secretary of Agriculture and said "all of these questions are of much interest and importance * * *", but failed to answer said questions because that court erroneously concluded that it lacked jurisdiction to so do. This question is of great national importance as the said "regulation," which is void on its face, it concededly not having been approved by the Secretary of Agriculture, is, nevertheless, being enforced throughout the country. This question of the necessity of prior approval by the Secretary of Agriculture has been raised in a number of cases

in various Federal jurisdictions, as we show in our supporting brief, and in the interests of a uniform and equitable administration of the law, this Honorable Court should settle this most important and nationally significant question of law.

## PRAYER

Wherefore, petitioner respectfully prays that writ of certiorari be issued out of and under the seal of this Court directed to the United States Circuit Court of Appeals for the Sixth Circuit commanding that Court to certify and send to this Court, on a day certain to be therein designated, a full and complete transcript of the record and of all proceedings in this cause, to the end that this case may be reviewed and determined by this Court; and that the decision of the Circuit Court of Appeals in the instant case should be reversed, and the judgment and sentence entered be set aside and the cause dismissed.

JASON L. HONIGMAN,
*Attorney for Petitioner.*

MILTON J. MILLER,
NORMAN S. SOMMERS,
*Of Counsel.*

Dated: Detroit, Michigan,
June 22, 1945.